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May 8, 2019

The Honorable Ben Carson  
Secretary  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

Dear Secretary Carson:

On April 3, 2019, you testified before the Appropriations Subcommittee on Transportation, Housing and Urban Development (THUD). At the hearing, I asked you about the eligibility of Deferred Action for Childhood Arrivals (DACA) recipients to access insured mortgage loans through the Federal Housing Administration (FHA). You confirmed that HUD's policy on allowing non-citizens to access FHA-backed loans has not changed and that there are "plenty of DACA recipients who have FHA mortgages." Given your assurances in both public and private, I was alarmed by official correspondence from FHA that was forwarded to my office in which FHA states that DACA recipients are ineligible for FHA-backed loans. The correspondence contradicts your testimony and pre-dates your appearance at the hearing. DACA recipients deserve clarity on whether they are eligible for FHA-backed mortgages. It is shocking and disappointing to see that there is either severe miscommunication between staff and administrators at HUD or that high-ranking officials are spreading misinformation about agency policies.

On five separate occasions HUD officials communicated to me and my staff that HUD has not changed its policy that allows DACA recipients to access FHA-backed loans. On February 12, 2019, FHA Administrator Montgomery testified before the Appropriations Subcommittee on THUD stating, "The [FHA] policy has been unchanged for many years. The current policy was developed in 2003 and it was codified into the new FHA handbook in 2015 in the previous administration. That policy is exactly what we are following today." Mr. Montgomery later said that he is unaware of FHA staff advising lenders not to work with DACA recipients. On February 20, 2019, we met for dinner in California. You confirmed with me that DACA recipients are eligible for FHA-insured loans. On March 6, 2019, staff from my office had a phone call with HUD's congressional liaison office as a follow-up to Acting Administrator Montgomery's testimony. Staff confirmed that HUD's policy has not changed and that the agency's interpretation of the policy has not changed. On April 3, 2019, you testified before the Appropriations Subcommittee on THUD. During the hearing I asked you again for clarification on whether DACA recipients are eligible for FHA-insured loans. It was encouraging to hear you testify that you would be surprised if HUD staff told lenders that DACA recipients are ineligible for FHA-insured mortgages. I also specifically asked if you were aware of any changes in the

interpretations of existing policy, to which you replied, “I inquired of the appropriate people, including the FHA Commissioner, and no one was aware of any changes that had been made to the policy whatsoever. I am sure we have plenty of DACA recipients who have FHA mortgages.”

I was alarmed and frustrated when I learned that FHA sent official correspondence to at least one lender that contradicts your testimony. A private lender with Northwest Mortgage shared official correspondence from FHA that clearly states that DACA recipients are ineligible for FHA-insured loans. The emails were sent before you testified and include conflicting messages on DACA recipients’ eligibility for FHA-insured loans. On March 11, 2019, the lender received an email stating “HUD has not implemented any policy changes during the current Administration, either formal or informal, with respect to FHA eligibility requirements for Deferred Action for Childhood Arrivals (DACA) recipients” and referred him to FHA’s Single-Family Housing Handbook 4000.1A.1.b.ii(A)(8)-(9). Under the Obama Administration, DACA recipients were eligible for FHA-backed loans. You and Acting Secretary Montgomery clarified that FHA’s policies have not changed as codified under the Obama Administration. This directly contradicts the following email that the lender received.

On March 20, 2019 the lender received an email from FHA that states, “individuals in the United States under the Deferred Action Childhood Arrival (DACA) program, EAD Category Code C33, are not considered to have lawful status. Therefore, the borrower(s) are not eligible for an FHA-insured mortgage.” This correspondence conveys a different message than what you shared while testifying before the Appropriations Subcommittee on THUD. After receiving emails from the private lender, staff from my office confirmed with another government office that FHA sent correspondence in March 2018 stated that DACA recipients are ineligible for FHA-backed loans.

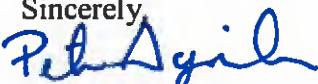
It is incredibly problematic that you and FHA Administrator Montgomery spread factually incorrect information about the operations of the FHA program. It is unsettling that HUD would change its policy with such lack of transparency. Many lenders advertise FHA loans to DACA recipients. However, HUD denied DACA recipients’ loans because of their immigration status, which is a departure from previous practice. Changes to this type of policy should be made after input from the public. Modifications to policies without input from industry leaders and the public creates uncertainty for lenders, realtors, borrowers and the housing industry.

As an appropriator, I am committed to keeping agency officials accountable and holding them to their word. You and Acting Administrator Montgomery said that HUD’s policies, and interpretation of policies, related to DACA recipients’ eligibility for FHA-backed loans has not changed since the policy was codified in 2013. However, it has been proven that this is not true. To provide clarity to lenders, realtors and prospective borrowers with DACA status, please answer the following questions:

- 1) Please explain why you were unaware of DACA recipients’ current ineligibility for FHA loans. If you were aware, please explain why you did not make that clear during your testimony on April 3, 2019.

- 2) Were changes in the FHA's policy communicated to supervisors? Was the change in policy made by mid-level or senior-level staff?
- 3) Is it possible that officials from other departments or agencies could have changed this policy without your knowledge? Is it possible that staff at HUD or the White House could have made the change in policy without your knowledge?
- 4) How many lenders received written correspondence indicating that DACA recipients are ineligible for FHA loans?
- 5) How many lenders received vague correspondence from FHA indicating that the agency's policy on DACA recipients' eligibility for FHA loans has not changed, formally or informally?
- 6) Will FHA continue to make qualified DACA recipients eligible for FHA-backed loans?
- 7) What other changes has FHA made to existing policy without putting those changes in writing?
- 8) What protocols does FHA plan to put in place to ensure that future changes to existing policy in the FHA's Single-Family Housing Policy Handbook will be clearly communicated to lenders?

Please provide answers to my questions no later than May 24, 2019. If you have any questions, please contact my Legislative Director, Stephanie Cuevas, at 202-225-3201.

Sincerely,  
  
Pete Aguilar  
Member of Congress